

FILED

NOT FOR PUBLICATION

AUG 30 2004

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

ZOUHRIR ABID ALAZZawe,

Petitioner,

v.

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

No. 02-72677

Agency No. A71-650-931

MEMORANDUM*

ZOUHRIR ABID ALAZZawe,

Petitioner,

v.

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

No. 03-70471

Agency No. A71-650-931

On Petition for Review of an Order of the

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Board of Immigration Appeals

Argued and Submitted July 13, 2004
San Francisco, California

Before: FERNANDEZ, PAEZ, and RAWLINSON, Circuit Judges.

Zouhrir Abid Alazzawe’s petition fails, because as conceded at oral argument, Alazzawe firmly resettled in Germany and is barred from seeking asylum from Iraq. *See* 8 C.F.R. § 208.13(c)(2) (barring the government from granting “asylum to any applicant . . . if the alien . . . has been firmly resettled . . .”).

Substantial evidence supports the BIA’s denial of the requested asylum from Germany. Alazzawe failed to show evidence compelling a finding that he “is unable or unwilling to return to [Germany] because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.” *Melkonian v. Ashcroft*, 320 F.3d 1061, 1064 (9th Cir. 2003)(citation and internal quotation marks omitted).

The BIA did not abuse its discretion when it denied Alazzawe’s motion to reopen, because all the evidence Alazzawe proffered was available to him at the time of his former hearing, or would not have assisted Alazzawe in proving his asylum claim. *See* 8 C.F.R. § 1003.2(c)(1) (“A motion to reopen proceedings shall

not be granted unless it appears to the Board that evidence sought to be offered is material and was not available and could not have been discovered or presented at the former hearing”); *see also Ordonez v. INS*, 345 F.3d 777, 785 (9th Cir. 2003) (“a motion to reopen will not be granted unless the [petitioner] establishes a prima facie case of eligibility for the underlying relief sought”).

PETITION DENIED.